

anticipated by Peterson under 35 U.S.C. 102. In addition, the office objected to informalities regarding claims 5 and 7-10. Per the suggestion of the Examiner the informalities have been corrected to place the claims in proper form.

In regard to the Peterson and Griffiths references, it is noted that neither Peterson or Griffiths recognize or provide solutions to the problem of shipping of marker posts. More specifically, Griffiths provides an anchoring device for a beach blanket and Peterson provides a survey rod with fins that resist rotation of his rod as it is driven into the ground. More importantly, neither Peterson or Griffiths recognize a problem in shipping of marker posts with external barbs and neither Peterson or Griffiths provide a solution to the problem of shipping marking posts with attached anchors.

While Peterson or Griffiths do not recognize the problem solved by applicant neither Peterson or Griffiths disclose the solution, namely, a marker post that has an anchoring flap secured by a living hinge that allows the anchoring flap to be folded inward to a "closed position to facilitate stacking and transportation of the marker post." In addition, neither Griffiths or Peterson disclose that after transporting a marker post to a working site the anchoring flap, which is supported by a living hinge, can be folded to "an open position" in order to prevent withdrawal of the marker post once it is embedded in the earth. Thus the problems of the art, the purpose of the invention and function of the present invention are not shown or suggested in either Peterson or Griffiths.

In regard to the 102 (b) rejection, the applicant submits the office is in error in the 35 U.S.C. 102 rejection of claims 1-7 and 9-12 on the reference of Griffiths et al. et al.

In the explanation of the 102 rejection on Griffiths et al. the office referenced the head portion (54) of the spike of Griffiths et al. as the first end and the pointed end 56 of the Griffiths as the second end. (page 4 lines 1-2) The office then went on to point out the "elastic deformable link 68" of Griffiths

was an anchoring flap and that it was located proximate the second end. While applicant vigorously disagrees that the deformable link 68 is an anchoring flap, assuming for arguments sake that it is then the 102 application of the language of claim 1 to Griffiths would be in error since the "link 68" is located proximate the first end (head) of Griffiths and not the second end (tapered end) of Griffiths. This is also note worthy from a functional standpoint since the location of an anchoring flap at the head end of Griffiths would render his above ground deformable link ineffective for anchoring purposes since an anchoring flap needs to be embedded in the ground in order to be effective in preventing withdrawal.

While the office took the position the deformable link 68 is an anchoring flap. This is in error since Figure 5 shows that deformable link 68 is not an anchoring flap but a "locking mechanism" that "locks the clamp 12 to spike 14" (column 4 lines 11-13). In contrast, applicants anchoring flap as pointed out in claim 1 functions to "prevent the withdrawal of said elongated member from an embedded position" (emphasis added) It is not for holding a ground clamp above ground such as shown in Griffiths. That is, link 68 would be inoperable to function as an anchoring clip since it is located above ground (see Figure 1).

Griffiths does disclose the use of "barbs 58" on the lower end of his spike but he points out that the "barbs 58 or other like gripping projections are provided on an outer surface 60 of the shank 52" (column 3 lines 61-64). In contrast, applicants claim 1 points out that the integral anchoring flap is attached by a living hinge. If Griffiths barbs are provided on the outer surface of his spike it is apparent that he does not form an integral anchoring flap that is "moveable from a first closed position to facilitate the handling and transportation of said marker post to a second open position to prevent the withdrawal of said elongated member from an embedded position" as pointed out in claim 1.

Claim 5 now specifically points out that in the closed condition the anchoring flap is coplanar with the marker post. The support for such amendment can be found in Figure 1 and page 5 lines 9-11. Since the Griffiths Barbs protrude outward from his spike as shown in Figure 4A it is apparent that his anchoring barbs 58 can not be moved to a closed position coplanar with his spike.

It is noted that Griffiths et al. has a tapered spike for holding his beach blanket. As pointed out in claim 1 applicants invention facilitates both the handling and the anchoring of the marker post. Because applicants living hinge can be used to fold his anchoring flap to an out-of-the way condition it permits the marker posts to be compactly stacked. In order to emphasize the condition where the posts can be stacked claim 4 has been amended to point out the elongated member has non-tapered sides to enhance the stacking for shipping and handling . Support for this position can be found in Figures 1-5 and Page 3 lines 4-7.

For the above reasons it is submitted the rejection of independent claim 1 and dependent claims 2-7 and 9-12 is in error.

In regard to claim 8 the office took the position that Peterson discloses the same. In this regard the office stated the Peterson fins 20 were anchoring flaps. (Page 6 last paragraph). The applicant submits that the Peterson fins 20 are not anchoring flaps as they are severable from his body (column 3 lines 58-62). In addition Peterson points out that each of this fins "are rectangular in shape and extends outward from the channel 18 with the plane of the fin 20 running parallel to the longitudinal axis of the body" (column 3 lines 48-51) (emphasis added) which would preclude his elongated fins 20 from functioning as anchor flaps any more than his elongated rod functions as an anchor flap.

The office further took the position that the Peterson fin has a living hinge. Applicant disagrees, Peterson has no hinge much less a living hinge. Note, Peterson states his fin is severed from his body

at the junction between his fin and his body. An item that hinges allows pivotal movement and is exactly opposite to an item that severs which does not allow pivotal movement.

Attention is called to claim 8 which points out that applicant has:

"anchoring flaps moveable from a first closed position to facilitate the handling and transportation of said marker post to a second open position to prevent the withdrawal of said elongated member from an embedded position whereby the flaps has a sufficient memory to stay in the open position until the post can be embedded." (emphasis added)

It is submitted that Peterson has elongated strips that extend axially along his rod and even if they were considered flaps the meaning of an "open position" or a "closed position" would have no meaning with respect to Peterson. Accordingly, it is submitted that the rejection of claim 8 on Peterson is in error.

VERSION OF CLAIMS WITH MARKINGS

4. (Amended) The marker post of claim 1 wherein said elongated member is triangular, circular, rectangular or square shaped and said elongated member includes a non-tapered exterior surface.

5. (Amended) The marker post of claim 1 wherein said elongated member and said anchoring flap [is] are weather resistant and said anchoring flap is in a coplaner condition with said marker post when said anchoring flap is in a closed position.

7..(Amended)The [hollow one piece anchoring] marker post of claim 1 wherein said elongated member is sufficiently stiff to permit the marker post to be driven into a top layer of soil.

8. (Amended) A hollow anchoring marker post comprising:

a. a triangular shaped elongated member having a first panel, a second panel, and a third panel forming the elongated member, said elongated member composed of a flexibly resilient polymer plastic;

b. a first anchoring flap, a second anchoring flap, and a third anchoring flap, each of said anchoring flaps having a first end and a second end, each of said anchoring flaps integrally connected to said elongated member, each of said anchoring flaps located proximate [the] a second end of said elongated member; and

c. a first flexible living hinge, a second flexible living hinge, and a third flexible living hinge; the second end of said first anchoring flap attached to the first panel of said elongated member by said first flexible living hinge, the second end of said second anchoring flap attached to the second panel of said elongated member by said second flexible living hinge, the second end of said third anchoring flap attached to the third panel of said elongated member by said third flexible living hinge, each of

said anchoring flaps moveable from a first closed position to facilitate the handling and transportation of said marker post to a second open position to prevent the withdrawal of said elongated member from an embedded position whereby the flaps has a sufficient memory to stay in the open position until the post can be embedded.

9. (Amended) The [hollow one piece anchoring] marker post of claim 7 wherein said polymer plastic is polycarbonate or polyethylene.

10. (Amended) The [hollow one piece anchoring] marker post of claim 7 wherein said elongated member is sufficiently stiff to permit the marker post to be driven into a top layer of soil.

Reconsideration is requested. It is further submitted that the claims are now in allowable form and a notice of allowance is respectfully requested.

Respectfully submitted,
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